



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

Matthew Zuker, Chairman
James S. DeCelle, Vice Chairman
Craig W. Hiltz, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member
Robert Fitzgerald, Associate Member

DECISION - BOARD OF APPEALS CASE NO. 18-17

APPLICANT:
JOSEPH RODRIGUES

LOCATION OF PROPERTY INVOLVED:
15 Marguerite Road, Walpole and shown on the Assessors Map as Lot No. 42-12, Residential B Zone.

APPLICATION:
A **Variance** from Section 6-B. (Table 6-B.1.) of the Zoning Bylaw to allow a detached accessory structure with a rear yard setback of 18.8 feet where 30 feet is required.

On September 6, 2017 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to the granting of a **Variance** to Joseph Rodrigues.

The following members were present and voting:

Matthew Zuker, Chairman
James S. DeCelle, Vice Chairman
Craig W. Hiltz, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member

The following members were present and not voting:

Robert Fitzgerald, Associate member

A motion was made by Mary Jane Coffey and seconded by Susanne Murphy to grant a **VARIANCE** from Section 6-B. (Table 6-B.1.) of the Zoning Bylaw to allow a detached accessory structure with a rear yard setback of 18.8 feet.

The vote was **4-1-0 in favor**; therefore the application for a **Variance** is hereby **granted, subject to the following conditions:** (Zuker, Hiltz, Murphy, Coffey in favor; DeCelle opposed)

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CONDITIONS:

1. The accessory garage shall be located substantially as shown on the plan entitled “Proposed Garage Plan of Land in Walpole, MA” prepared by Colonial Engineering, Inc., latest revision date June 26, 2017.
2. A 6’ screening fence shall be installed along the 72 Hutchinson Road property line for a minimum distance of 60 feet from the edge of the Carpenter Road layout in a southerly direction.
3. The general configuration of the building shall be as depicted in the photograph provided by the applicant at the September 6, 2017 hearing. As represented by the applicant, the garage will be two-car and will have a second level under the rooflines of the building as depicted in the photograph. The color and configuration of windows, doors, and roof, siding and trim materials are at the applicant’s discretion, although the general architectural style (colonial) shall be consistent with the photograph provided.
4. The height of the detached building shall not exceed 15 feet as measured per the requirements of the Zoning Bylaw for Building Height.
5. No windows, skylights or dormers shall face the 72 Hutchinson Road property. Windows, dormers or skylights may be installed on either gable end or on the roof line facing Marguerite Road.
6. No outside lighting shall be placed on the side of the garage which faces the property at 72 Hutchinson Road. No outside lighting may illuminate in any substantial way, the property at 72 Hutchinson Road.

REASONS FOR DECISION:

It is the finding of the Board that the Applicant was able to meet the requirements of Section 6-B. of the Zoning Bylaw. Specifically, the Board made the following findings:

- 1. Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the appellant or petitioner.*

The Board finds that the applicant has shown substantial hardship which derives from both the shape and topography of the lot. The site is a corner lot on Marguerite Road and Carpenter Road. It appears that when the lot was created in 1950 as part of a large subdivision, Marguerite Road was considered the property’s frontage. Even though there is sufficient frontage on Carpenter Road, the original frontage on Marguerite Road continues to provide the property’s current frontage, which therefore renders the lot non-conforming and creates a rear yard setback area along the easterly property boundary. Alternatively, if the Carpenter Road frontage were being considered, the proposed structure would comply with sideyard setback requirements. This unusual setback situation in which both roads could reasonably be considered the lot frontage create a hardship for the Applicant, who is significantly limited in the potential placement of the proposed structure. In addition, the lot has excessive topography along the easterly boundary, which significantly restricts the backyard area for the house. Shifting the garage towards the house would significantly restrict access to portions of the backyard from the Carpenter Road side of the property.

The Applicant desires to install the garage as detached so they can continue to have reasonable access around their house without being restricted by the excessive topography along the easterly portion of the lot. Even though the topography creates access issues for the Applicant's use of their yard areas, it will be beneficial with respect to the proposed location of the garage. The garage will be benched into the hillside and therefore will appear substantially smaller in height from adjoining properties and will be consistent with the adjacent structure's height.

2. *Desirable relief may be granted without substantial detriment to the public good.*

The Board finds that desirable relief may be granted without substantial detriment to the public good as the property lies on a corner lot and the proposed garage setbacks will be consistent with normally required 15-foot sideyard setbacks. From the street perspective, the rearyard in question appears to be a sideyard due to the corner configuration of the lot. The required screening fence will mitigate privacy impacts to surrounding properties. As such, the placement of the garage will be consistent with surrounding land uses and will not result in a substantial detriment to the public good.

3. *Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.*

The Board finds that the granting of this Variance with the above-imposed conditions does not substantially derogate from the purpose and intent of the Zoning Bylaw in that Residence B zoning is intended to provide appropriate yard area for residential use. Given the configuration of the corner lot and its location within a 1950's subdivision, where nearly all of the properties are non-conforming to some degree, the proposed garage placement is reasonable and consistent with typical sideyard setback requirements. The garage is proposed to sit in an area that appears to be a sideyard for the property.

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Consistency: This decision is consistent with purpose and intent of the Zoning Bylaw.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

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Said Variance is granted pursuant to Massachusetts General Laws c. 40A, s. 10 which provides in pertinent part as follows: "If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty (30) days of the date of application thereof, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section."

Massachusetts General Laws c. 40A, s. 11. provides in pertinent part as follows:

"...No variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant."

MASSACHUSETTS GENERAL LAWS c. 40A, s. 15 PROVIDES THAT APPEALS FROM A DECISION OF A BOARD OF APPEALS SHALL BE MADE PURSUANT TO SECTION 17 OF c 40A AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS



Craig W. Niltz, Clerk

cc: Town Clerk Engineering Planning Board
 Board of Selectmen Building Inspector Conservation Commission

This decision was made on September 6, 2017 and filed with the Town Clerk on September 13, 2017